

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JIMMY QUINTIN GREEN,

Petitioner,

Criminal No. 03-80016

Civil No. 06-10488

v.

UNITED STATES OF AMERICA,

Respondent.

_____ /

**ORDER DENYING MOTION
TO MODIFY SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Before the court is Petitioner's motion to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2), filed November 5, 2007. The government submitted a response on January 22, 2008. Section 3582(c)(2) permits the court to modify the sentence of a defendant "who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o) . . ."

Pursuant to § 3582(c)(2), Green seeks a reduction in his sentence based upon amendments to section 4A1.2(c) of the Sentencing Guidelines, effective November 1, 2007.¹ This section, regarding criminal history, was amended to exclude misdemeanor offenses if the sentence was one year or less of probation. Green contends that one of his prior offenses resulted in a sentence of probation that did not exceed one year and, therefore, this offense should be removed from his criminal history, resulting in a lower criminal history category and sentencing range.

¹ Green references section 4A1.2(b)(1)(A), but there is no such section. The section Green refers to in his motion appears to be section 4A1.2(c).

The government notes, however, that the prior offense at issue was aggravated assault, a felony. The amendments to U.S.S.G. § 4A1.2(c) do not affect the consideration of felony offenses: “Sentences for all felony offenses are counted.” Id. Because the November 1, 2007 amendments to U.S.S.G. § 4A1.2(c) are not applicable here (and because they do not appear to be retroactive), the court is without authority to modify Green’s sentence pursuant to 18 U.S.C. § 3582(c)(2).

Therefore, IT IS HEREBY ORDERED that Petitioner’s November 5, 2007 motion to modify sentence is DENIED.

s/John Corbett O’Meara
United States District Judge

Date: January 28, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, January 28, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager